

#### § 1.21-4

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the surviving spouse remarries before the end of the taxable year in which the deceased spouse dies, a credit may be allowed on the decedent spouse's separate return.

[T.D. 9354, 72 FR 45341, Aug. 14, 2007]

#### § 1.21-4 Payments to certain related individuals.

(a) *In general.* A credit is not allowed under section 21 for any amount paid by the taxpayer to an individual—

(1) For whom a deduction under section 151(c) (relating to deductions for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse for the taxable year;

(2) Who is a child of the taxpayer (within the meaning of section 152(f)(1) for taxable years beginning after December 31, 2004, and section 151(c)(3) for taxable years beginning before January 1, 2005) and is under age 19 at the close of the taxable year;

(3) Who is the spouse of the taxpayer at any time during the taxable year; or

(4) Who is the parent of the taxpayer's child who is a qualifying individual described in § 1.21-1(b)(1)(i) or (b)(2)(i).

(b) *Payments to partnerships or other entities.* In general, paragraph (a) of this section does not apply to services performed by partnerships or other entities. If, however, the partnership or other entity is established or maintained primarily to avoid the application of paragraph (a) of this section to permit the taxpayer to claim the credit, for purposes of section 21, the payments of employment-related expenses are treated as made directly to each partner or owner in proportion to that partner's or owner's ownership interest. Whether a partnership or other entity is established or maintained to avoid the application of paragraph (a) of this section is determined based on the facts and circumstances, including whether the partnership or other entity is established for the primary purpose of caring for the taxpayer's qualifying individual or providing household services to the taxpayer.

(c) *Examples.* The provisions of this section are illustrated by the following examples:

*Example 1.* During 2007, X pays \$5,000 to her mother for the care of X's 5-year old child who is a qualifying individual. The expenses otherwise qualify as employment-related expenses. X's mother is not her dependent. X may take into account under section 21 the amounts paid to her mother for the care of X's child.

*Example 2.* Y is divorced and has custody of his 5-year old child, who is a qualifying individual. Y pays \$6,000 during 2007 to Z, who is his ex-wife and the child's mother, for the care of the child. The expenses otherwise qualify as employment-related expenses. Under paragraph (a)(4) of this section, Y may not take into account under section 21 the amounts paid to Z because Z is the child's mother.

*Example 3.* The facts are the same as in Example 2, except that Z is not the mother of Y's child. Y may take into account under section 21 the amounts paid to Z.

[T.D. 9354, 72 FR 45341, Aug. 14, 2007]

#### § 1.23-1 Residential energy credit.

(a) *General rule.* Section 23 or former section 44C provides a residential energy credit against the tax imposed by chapter 1 of the Internal Revenue Code. The credit is an amount equal to the individual's qualified energy conservation expenditures (set out in paragraph (b)) plus the individual's qualified renewable energy source expenditures (set out in paragraph (c)) for the taxable year. However, the credit is subject to the limitations described in paragraph (d) and the special rules contained in § 1.23-3. The credit is non-refundable (that is, the credit may not exceed an individual's tax liability for the taxable year). However, any unused credit may be carried over to succeeding years to the extent permitted under paragraph (e). Renters as well as owners of a dwelling unit may qualify for the credit. See § 1.23-3(h) for the rules relating to the allocation of the credit in the case of joint occupants of a dwelling unit.

(b) *Qualified energy conservation expenditures.* In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of the energy conservation expenditures made by the taxpayer with respect to the dwelling unit during the taxable year, but not in excess of \$2,000 of such expenditures. See § 1.23-2(a) for the definition of energy conservation expenditures.

(c) *Qualified renewable energy source expenditures.* In the case of taxable years beginning after December 31, 1979, the qualified renewable energy source expenditures are 40 percent of the renewable energy source expenditures made by the taxpayer during the taxable year (and before January 1, 1986) with respect to the dwelling units that do not exceed \$10,000. In the case of taxable years beginning before January 1, 1980, the qualified renewable energy source expenditures are the renewable energy source expenditures made by the taxpayer with respect to the dwelling unit during the taxable year, but not in excess of—

(1) 30 percent of the expenditures up to \$2,000, plus

(2) 20 percent of the expenditures over \$2,000, but not more than \$10,000.

See § 1.23-2(b) for the definition of renewable energy source expenditures.

(d) *Limitations*—(1) *Minimum dollar amount.* No residential energy credit shall be allowed with respect to any return (whether joint or separate) for any taxable year if the amount of the credit otherwise allowable (determined without regard to the tax liability limitation imposed by paragraph (d)(3) of this section) is less than \$10.

(2) *Prior expenditures taken into account*—(i) *In general.* For purposes of determining the credit for expenditures made during a taxable year, the taxpayer must reduce the maximum amount of allowable expenditures with respect to the dwelling unit in computing qualified energy conservation expenditures (under paragraph (b)) or qualified renewable energy conservation expenditures (under paragraph (c)) by prior expenditures which were made by the taxpayer or by joint occupants (see § 1.23-3(h)) with respect to the same dwelling unit, and which were taken into account in computing the credit for prior taxable years. In the case of expenditures made during taxable years beginning before January 1, 1980, the reduction of the maximum amount under paragraph (c) must first be made with respect to the first \$2,000 of expenditures (to which a 30 percent rate applies) and then with respect to the next \$8,000 of expenditures (to which a 20 percent rate applies). This reduction must be made if all or any

part of the credit was allowed in or was carried over from a prior taxable year.

(ii) *Change of principal residence.* A taxpayer is eligible for the maximum credit for qualifying expenditures made with respect to a new principal residence notwithstanding the allowance of a credit for qualifying expenditures made with respect to the taxpayer's previous principal residence. Furthermore, except in certain cases involving joint occupancy (see § 1.23-3(h)), a taxpayer is eligible for the maximum credit notwithstanding the allowance of a credit to a prior owner of the taxpayer's new principal residence.

(iii) *Example.* The rules with respect to the reduction for prior expenditures are illustrated by the following example:

*Example.* In 1978, A has \$1,000 of energy conservation expenditures and \$5,000 of renewable energy source expenditures in connection with A's principal residence. A's residential energy credit for 1978 is \$1,350, made up of \$150 of qualified energy conservation expenditures (15 percent of \$1,000) plus \$1,200 of qualified renewable energy source expenditures (30 percent of the first \$2,000 plus 20 percent of the next \$3,000). In 1979 A has an additional \$2,000 of energy conservation expenditures and \$3,000 of renewable energy source expenditures in connection with the same principal residence. A's residential energy credit for 1979 is \$750, made up of \$150 of qualified energy conservation expenditures (15 percent of the new maximum \$1,000, which was reduced from \$2,000 by \$1,000 of energy conservation expenditures taken into account in 1978) plus \$600 of qualified renewable energy source expenditures (20 percent of \$3,000, which reflects the reduction of the maximum allowable expenditures by the \$5,000 of renewable energy source expenditures taken into account in 1978). The maximum residential energy credit allowable to A with respect to the same principal residence in subsequent years in which the credit is allowable is \$400 (20 percent of the new maximum of \$2,000 for renewable energy source expenditures and none for energy conservation expenditures).

(3) *Effects of grants and subsidized energy financing*—(i) *In general.* Qualified expenditures financed with Federal, State, or local grants shall be taken into account for purposes of computing the residential energy credit only if the amount of such grants is taxable as gross income to the taxpayer under section 61 (relating to the definition of gross income) and the regulations

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thereunder. In the case of taxable years beginning after December 31, 1980, qualified expenditures made from subsidized energy financing (as defined in § 1.23-2(i)) shall not be taken into account (except as provided in the following sentence) for purposes of computing the residential energy credit. In addition, the taxpayer must reduce the maximum amount allowable expenditures (reduced as provided in paragraph (d)(2) of this section) with respect to the dwelling unit in computing qualified energy conservation expenditures (under paragraph (b) of this section) or qualified renewable energy source expenditures (under paragraph (c) of this section), whichever is appropriate, by an amount equal to the sum of—

(A) The amount of expenditures from subsidized energy financing (as defined in § 1.23-2(i)) that were made by the taxpayer during the taxable year or any prior taxable year beginning after December 31, 1980, with respect to the same dwelling unit, and

(B) The amount of any funds received by the taxpayer during the taxable year or any prior taxable year beginning after December 31, 1980, as a Federal, State, or local government grant made in taxable years beginning after December 31, 1980, that were used to make qualified expenditures with respect to the same dwelling unit and that were not included in the gross income of the taxpayer.

(ii) *Example.* The provisions of this paragraph (d)(3) may be illustrated by the following example:

*Example.* A had in 1979 made a renewable energy source expenditure of \$2,000 in connection with A's residence for which he took the then allowed credit of \$600. In 1981 A made additional renewable energy source expenditures of \$9,000 with respect to which he received a loan of \$5,000 from the Federal Solar-Energy and Energy Conservation Bank. Assume that the loan is subsidized energy financing. A computes the credit as follows: The initial maximum allowable dollar limit is \$10,000 which is reduced by the sum of the prior year expenditures of \$2,000 and the subsidized energy financing loan of \$5,000 leaving a dollar limit of \$3,000 (\$10,000 - (\$2,000 + \$5,000)). The \$5,000 portion of the \$9,000 funded by the subsidized energy financing loan is not allowed as a renewable energy source expenditure. The remaining expenditures in 1981 are \$4,000 (\$9,000 - \$5,000). However, this amount exceeds the allowed

maximum dollar limit of \$3,000. Therefore, A's creditable expenses for 1981 are only \$3,000 on which the credit is \$1,200 (40 percent of \$3,000).

(4) *Tax liability limitation*—(i) *For taxable years beginning after December 31, 1983.* For taxable years beginning after December 31, 1983, the credit allowed by this section shall not exceed the amount of tax imposed by chapter 1 of the Internal Revenue Code of 1954 for the taxable year, reduced by the sum of credits allowable under—

(A) Section 21 (relating to expenses for household and dependent care services necessary for gainful employment),

(B) Section 22 (relating to credit for the elderly and the permanently and totally disabled), and

(C) Section 24 (relating to contributions to candidates for public office).

See section 26 (b) and (c) for certain taxes that are not treated as imposed by chapter 1.

(ii) *For taxable years beginning before January 1, 1984.* For taxable years beginning before January 1, 1984, the credit allowed by this section shall not exceed the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 for the taxable year, reduced by the sum of the credits allowable under—

(A) Section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds),

(B) Section 33 (relating to the taxes of foreign countries and possessions of the United States),

(C) Section 37 (relating to retirement income),

(D) Section 38 (relating to investment in certain depreciable property),

(E) Section 40 (relating to expenses of work incentive programs),

(F) Section 41 (relating to contributions to candidates for public office),

(G) Section 42 (relating to the general tax credit),

(H) Section 44 (relating to purchase of new personal residence),

(I) Section 44A (relating to expenses for household and dependent care services), and

(J) Section 44B (relating to employment of certain new employees).

(e) *Carryforward of unused credit.* If the credit allowable by this section exceeds the tax liability limitation imposed by section 23(b)(5) (or former section 44C(b)(5)) and paragraph (d)(4) of this section, the excess credit shall be carried forward to the succeeding taxable year and added to the credit allowable under this section for the succeeding taxable year. A carryforward that is not used in the succeeding year because it exceeds the tax liability limitation shall be carried forward to later taxable years until used, except that no excess credit may be carried forward to any taxable year beginning after December 31, 1987.

[T.D. 7717, 45 FR 57715, Aug. 29, 1980. Redesignated and amended by T.D. 8146, 52 FR 26669, July 16, 1987]

#### § 1.23-2 Definitions.

For purposes of section 23 or former section 44C and regulations thereunder—

(a) *Energy conservation expenditures—*

(1) *In general.* The term “energy conservation expenditure” means an expenditure made on or after April 20, 1977, and before January 1, 1986, by a taxpayer for insulation or any other energy-conserving component, or for labor costs allocable to the original installation of such insulation or other component, if all of the following conditions are satisfied:

(i) The insulation (as defined in paragraph (c)) or other energy-conserving component (as defined in paragraph (d)) is installed in or on a dwelling unit that is used as the taxpayer’s principal residence when the installation is completed. See § 1.23-3(e) for the definition of principal residence.

(ii) The dwelling unit is located in the United States (as defined in section 7701(a)(9)).

(iii) The construction of the dwelling unit was substantially completed before April 20, 1977. See § 1.23-3(f) for the definition of the terms “construction” and “substantially completed”. In the case of expenditures made with respect to the enlargement of a dwelling unit, the construction of the enlargement must have been substantially completed before April 20, 1977.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

*Example 1.* In 1978, A spent \$500 for the purchase and installation of new storm windows to replace old storm windows, \$100 to reinstall old storm windows, and \$150 to transfer a A’s house insulation which had been installed in A’s garage. Only the \$500 spent for new storm windows qualifies as an energy conservation expenditure. The \$100 spent to reinstall storm windows and the \$150 spent to transfer insulation to A’s house do not qualify since the only installation costs that qualify are those for the original installation of energy conservation property the original use of which commences with the taxpayer.

*Example 2.* In June 1977, B purchased for B’s principal residence a new house that was substantially completed before April 20, 1977. Pursuant to B’s request the builder installed storm windows on May 1, 1977, the cost of this option being included in the purchase price of the house. The portion of the purchase price of the residence allocable to the storm windows constitutes an energy conservation expenditure. However, no other part of the purchase price may be allocated to energy conservation property (insulation and other energy conserving components) installed before April 20, 1977. To qualify as an energy conservation expenditure, an expenditure must be made (*i.e.*, installation of the energy conservation property must be completed) on or after April 20, 1977.

(b) *Renewable energy source expenditures.* The term “renewable energy source expenditures” means an expenditure made on or after April 20, 1977, and before January 1, 1986, by a taxpayer for renewable energy source property (as defined in paragraph (e)), or for labor costs properly allocable to the on-site preparation, assembly, or original installation such property, if both of the following conditions are satisfied:

(1) The renewable energy source property is installed in connection with a dwelling unit that is used as the taxpayer’s principal residence when the installation is completed. See § 1.23-3(e).

(2) The dwelling unit is located in the United States (as defined in section 7701(a)(9)).

Additionally, the term “renewable energy source expenditures” includes expenditures made after December 31, 1979, and before January 1, 1986, for an onsite well drilled for any geothermal deposit (as defined in paragraph (h)), or